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No. 185

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL.,
Petitioners,

v.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF RAILWAY LABOR EXECUTIVES' ASSOCIATION AS AMICUS CURIAE

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On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF OF RAILWAY LABOR EXECUTIVES' ASSOCIATION AS AMICUS CURIAE

The Railway Labor Executives' Association submits this brief as *amicus curiae* in support of the petition of the Brotherhood of Locomotive Engineers, et al., that the judgment of the United States Court of Appeals be reversed. The consent of the attorneys for both the petitioners and the respondent has been

obtained and is submitted herewith in accordance with Rule 42 of the Court's Rules.

THE INTEREST OF THE ASSOCIATION

The Railway Labor Executives' Association is a voluntary unincorporated association located in Washington, D. C., with which are affiliated twenty-three standard national and international railroad labor organizations which are the duly authorized representatives of more than 90 percent of the nation's rail employees under the Railway Labor Act (45 U.S.C.A. 151 et seq.) The names of these individual organizations are:

American Railway Supervisors' Association
American Train Dispatchers' Association
Brotherhood of Locomotive Engineers
Brotherhood of Locomotive Firemen and Enginemen
Brotherhood of Maintenance of Way Employes
Brotherhood of Railroad Signalmen
Brotherhood of Railroad Trainmen
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes
Brotherhood Railway Carmen of America
Brotherhood of Sleeping Car Porters
Hotel and Restaurant Employes and Bartenders International Union
International Association of Machinists
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
International Brotherhood of Firemen and Oilers
International Organization Masters, Mates and Pilots of America
National Marine Engineers' Beneficial Association
Order of Railway Conductors and Brakemen

Railroad Yardmasters of America
Railway Employes' Department, AFL-CIO
Sheet Metal Workers' International Association
Switchmen's Union of North America
The Order of Railroad Telegraphers

This Court has heretofore recognized the Association as a proper party to appear and speak for these organizations and their member employees. *Interstate Commerce Commission* v. *Railway Labor Executives' Association,* 315 U.S. 373 (1942); *Railway Labor Executives' Association* v. *United States,* 339 U.S. 142 (1950); *American Trucking Associations, Inc., et al.* v. *United States,* 355 U.S. 141 (1957). Four of these organizations are petitioners in this case.

The question presented by the petition for certiorari with respect to which the Court granted review is of vital importance to the Association and the individual organizations of which it is composed. These organizations have several thousand agreements between themselves and railroads on file with the National Mediation Board that have been entered into pursuant to the requirements of the Railway Labor Act and which may give rise to the type of dispute here involved. If the carriers are free to ignore the provisions of these agreements with impunity and to unilaterally change working conditions covered by the agreements without regard to equitable considerations such as are embodied in the action of the District Court, the value of these agreements and the statute under which they were executed will be materially impaired. Thus, the Association and the nineteen organization members for which it speaks and which are not parties to the litigation have a direct and substantial interest in this case.

QUESTION PRESENTED

The Court in its order of October 12, 1959, granting the petition for a writ of certiorari, set forth the question to be reviewed as follows:

Whether a district court under circumstances where a dispute arising under the Railway Labor Act has been submitted by a railroad to the National Railroad Adjustment Board and an injunction against a strike by employees is sought on authority of *Brotherhood of Railroad Trainmen* v. *Chicago River and Ind. R.R. Co.*, 353 U.S. 30, may on the granting of an injunction impose reasonable conditions designed to protect the employees against a harmful change in working conditions during pendency of the dispute before the Adjustment Board by ordering that the railroad restore the status quo, or, in the alternative, pay the employees the amount they would have been paid had changes in working conditions giving rise to the dispute not be been made.

SUMMARY OF ARGUMENT

1. The District Court, in the exercise of its powers as a court of equity, has the authority and the duty in the granting of injunctive relief to do so upon conditions that will protect all, including the public, whose interests the injunction may affect. This authority includes the power to prescribe the performance of conditions designed to protect the rights of the parties or the public interest. The condition here imposed required the respondent railroad to restore the status quo pending the outcome of administrative proceedings before the National Railroad Adjustment Board. Such a condition is in keeping

with the traditional purposes of injunctions *pendente lite*.

2. The Court of Appeals erred in holding that the District Court could not exercise such traditional discretionary authority in this case because to do so involved passing a preliminary judgment upon the merits of a dispute committed to the exclusive jurisdiction of the National Railroad Adjustment Board. It is clear that when a Federal court of equity grants relief by way of injunction it has a responsibility to protect all the interests before it, and, if the discharge of such responsibility requires it to examine the merits of the dispute, it does so only for the purpose of properly exercising the jurisdiction invoked by the prayer for relief, i.e. its power and responsibility to see that justice is done to all parties before it and to the public. Its decision has no effect upon the Adjustment Board's determination. Moreover, the District Court's power to grant injunctive relief is based upon the authority to preserve the scheme set forth in Section 3 of the Railway Labor Act for the settlement of disputes concerning the interpretation and application of contracts. That Act places responsibilities upon carriers as well as employees to exert every reasonable effort to maintain agreements and to change such agreements only after exhaustion of various procedures. District Courts have authority to examine all the circumstances of a dispute and to mold their decrees to achieve the broad purposes of the statute. This is particularly true since the public has a substantial interest in such matters. If the provisions of the Railway Labor Act require the employees to submit their side of the dispute to the Adjustment Board and authorize the Federal courts

to enjoin unilateral employee action to enforce the employees' views, such provisions must at least also authorize the Federal courts in the exercise of discretion to require a carrier to maintain the status quo pending an Adjustment Board decision. Otherwise, the decision in *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana Railroad Company*, 353 U.S. 30 (1957), becomes a weapon for destroying the Railway Labor Act rather than preserving it. Carriers can violate existing agreements with impunity, secure in the knowledge that it will not cost them anything unless the employees survive years of Adjustment Board proceedings and subsequent enforcement litigation. Even then the advantages gained by the carrier during such period can encourage violations of existing agreements without justification.

ARGUMENT

I.

A Federal Court Clearly Has Power to Impose Equitable Conditions Upon the Grant of Injunctive Relief to Protect All Interests Affected by the Injunction

It is a generally recognized principle of law that a court of equity may, and indeed should, in the exercise of its sound discretion, impose equitable conditions upon the grant of injunctive relief that will protect all—including the public—whose interests the injunction may affect.

Yakus v. *United States*, 321 U.S. 414, 440 (1944)

Federal Power Commission v. *Interstate Natural Gas Company*, 336 U.S. 577, 582 (1949)

Inland Steel Co. v. *United States*, 306 U.S. 153, 157 (1939)

Central Kentucky Natural Gas Company v. *Railroad Commission of Kentucky,* 290 U.S. 264, 271 (1933)

Russell v. *Farley,* 105 U.S. 433, 438 (1881)

28 *Am. Jur.,* Injunctions, Section 289 (page 800)

7 Moore, "Federal Practice", page 1685

This principle was set forth in the *Inland Steel* case as follows (page 157):

> ". . . it is the duty of a court of equity granting injunctive relief to do so upon conditions that will protect all — including the public — whose interests the injunction may effect."

It was also set forth in the *Central Kentucky Natural Gas* case in greater detail as follows (page 271):

> "The power of a court of equity, in the exercise of a sound discretion, to grant, upon equitable conditions, the extraordinary relief to which a plaintiff would otherwise be entitled, without condition, is undoubted. It may refuse its aid to him who seeks relief from an illegal tax or assessment unless he will do equity by paying that which is conceded to be due. State R. Tax Cases, 92 U.S. 575, 23 L. ed. 663; Cummings v. Merchants Nat. Bank, 101 U.S. 153, 25 L. ed. 903; People's Nat. Bank v. Marye, 191 U.S. 272, 287, 48 L. ed. 180, 187, 24 S. Ct. 68; see Norwood v. Baker, 172 U.S. 269, 294, 43 L. ed. 443, 453, 19 S. Ct. 187. It may withhold from a plaintiff the complete relief to which he would otherwise be entitled if the defendant is willing to give in its stead such substituted relief as, under the special circumstances of the case, satisfies the requirements of equity and good conscience. Harrisonville v. W. S. Dickey Clay Mfg. Co., 289 U.S. 334, 338, 77 L. ed. 1208, 1211, 53 S. Ct. 602. It may

prescribe the performance of conditions designed to protect the rights of the parties pending appeal, Hovey v. McDonald, 109 U.S. 150, 157, 27 L. ed. 888, 890, 3 S. Ct. 136, or to protect temporarily the public interest while its decree is being carried into effect. See Consolidated Gas Co. v. Newton (D.C.) 267 Fed. 231, 273; Newton v. Consolidated Gas Co., 258 U.S. 165, 66 L. ed. 538, 42 S. Ct. 264."

There can thus be no question but that a Federal District Court, sitting as a court of equity, has the authority to impose conditions upon the grant of an injunction for the protection of defendants and the public interest.

The condition imposed by the District Court in this case reads as follows (R. 91):

"It Is, Therefore, Ordered that this cause be continued and held in abeyance until the controversy between plaintiffs and defendants herein shall have been settled by and between the parties, or until decisions on the various submissions made by plaintiffs, as set out in the complaint, as amended, have been rendered, and that during such period plaintiffs restore the conditions which were affected by their General Orders 119 and 120, referred to in the complaint, as amended, to the conditions which existed before such orders became effective, and maintain such restored conditions during such period. In the alternative if the plaintiffs do not elect to restore and maintain the conditions as ordered aforesaid, then until the matters have been finally determined in the boards hereinabove mentioned, the plaintiffs will pay to the employees of the plaintiffs affected adversely by plaintiffs' General Orders 119 and 120 the same amounts of money that they would have paid had the changes made by plaintiffs' General Orders 119 and 120 not been made.

> "In any controversy as to what this pay may be, it may be determined by the average annual wage earned by such employee or employees in the affected service during 1957 adjusted for wage increases put into effect subsequent to January 1, 1958. Any amount payable under this order shall be reduced by the amount which is payable by plaintiffs to the Railroad Retirement Board for unemployment compensation received by such employee. It is further ordered that the defendants and employees of plaintiffs represented by defendants be and they are hereby enjoined from striking during such period on account of the controversy and dispute involved herein between plaintiffs and defendants."

The purpose and effect of this requirement was to protect the employees from a harmful change in their working conditions during the pendency of the dispute before the Adjustment Board. Such a condition amounts to nothing more than the traditional equity maintenance of the staus quo during the pendency of a proceeding. In the usual situation this purpose is accomplished by an injunction *pendente lite*. In the type of situation here involved it could be accomplished only by conditioning the injunction. It thus involves the exercise of the normal powers of a court of equity.

II.

The Railway Labor Act Did Not Prevent the District Court From Exercising Its Equitable Powers to Impose the Condition Here Involved

The Court of Appeals held that the Railway Labor Act prevented the District Court from exercising its normal equitable powers in this case to condition the grant of the injunctive relief because the statute gives exclusive jurisdiction to the National Railroad Ad-

justment Board to determine the merits of the dispute between petitioners and the respondent railroad and the imposition of such a condition involved passing a preliminary judgment upon such merits. The court's finding reads as follows (R. 376):[1]

> "If we accept the premise, heretofore discussed and decided, that the dispute precipitated by General Orders 119 and 120 was a minor dispute, which the National Railroad Adjustment Board alone had jurisdiction to resolve, then it is clear that the district court could not pass any sort of preliminary judgment upon the merits of that dispute. That kind of jurisdiction denied to the district court by the provisions of the Railway Labor Act cannot be exercised under the guise of discretionary equity powers to impose reasonable conditions upon the grant of an injunctior of requiring the plaintiff Railroad Companies to come into equity with clean hands, or upon any other theory whatsoever. To hold otherwise would permit the district court, in every case where either a railroad company or a labor organization seeks an injunction to protect the jurisdiction of the National Railroad Adjustment Board, to lift itself by its bootstraps into some kind of jurisdiction to pass preliminary judgment upon the merits of disputes committed to the exclusive jurisdiction of the Board."

The same argument was made to this Court in *Federal Power Commission* v. *Interstate Natural Gas Company*, 336 U.S. 577 (1949), and rejected. In that case the Court of Appeals for the Fifth Circuit had issued a stay order pending judicial review of a rate

[1] The decision thus does not involve any issue as to the reasonableness of the condition in the circumstances or of abuse by the District Court of its discretion. The issue is solely one of power.

order of the Federal Power Commission reducing rates for natural gas. The stay order required, as a condition of the stay, the depositing in the registry of the court of the monthly difference between payments under the existing rates and those required under the Commission's order. After the agency order was affirmed, the Court of Appeals ordered the fund paid to pipeline companies from whom the payments had been exacted as against claims that it should be distributed to the ultimate consumers of gas or to others equitably entitled. On review of the distribution order it was argued to this Court that the Court of Appeals could not bypass the pipe-line companies without undertaking to pass on the reasonableness of the rates which they had charged, a matter committed to the Federal Power Commission. This Court, in reversing the Court of Appeals, rejected the argument with the following findings (page 583):

> "It is said that the federal court could not bypass the pipe-line companies without undertaking to pass on the reasonableness of the rates which they have charged—a matter beyond its competence except on review of orders of the Commission. But it is not ratemaking to determine the equity of the claim of the pipe-line companies to the fund. The federal court, through exercise of its power under § 19 of the Act, 15 USCA § 717r, 4 FCA title 15 § 717r, issued the stay order under which the fund was accumulated. When a federal court of equity grants relief by way of injunction it has a responsibility to protect all the interests whom its injunction may affect. Inland Steel Co. v. United States, 306 US 153, 83 L ed 557, 59 S Ct 415. It assumes the duty to make disposition of the fund in accord with equitable principles. United States v. Morgan, supra (307 US at 191, 83 L ed 1217, 59 S Ct 795). If in

> a particular case the court reaches the question of reasonableness of rates, it does so only for purposes of distributing the fund for whose creation it alone was responsible. It does not fix or prescribe rates for the past or the future. The reasonableness of rates charged by the companies who claim the fund is wholly ancillary to the problem of determining what claimants are equitably entitled to share in it."

The same reasoning is equally applicable to the ground on which the Court of Appeals rested its decision in this case. The District Court in granting the respondent railroad an injunction also had a responsibility to protect all the interests whom its injunction might affect. If this required it to examine the dispute and to conclude that the circumstances were such as to require the railroad to maintain the status quo during the pendency of the proceeding before the Adjustment Board, then the District Court was simply exercising a jurisdiction inherent in its equitable powers invoked by petitioners' application for an injunction. It was no more invading the jurisdiction of the Adjustment Board than the Court of Appeals would have invaded the jurisdiction of the Federal Power Commission had it taken the action found by this Court to be proper in the *Interstate Natural Gas* case. As this Court stated in the quotation above any consideration given to the question committed to the administrative agency is wholly ancillary to the problem of determining the equities involved in respondent's prayer for an injunction.

In addition, the power of a District Court to enjoin a railway labor organization in the circumstances

here involved is based on authority to compel compliance with the provisions of the Railway Labor Act and particularly Section 3 thereof (45 U.S.C.A. 153). *Brotherhood of Railroad Trainmen, et al.* v. *Chicago River & Indiana Railroad Company,* 353 U.S. 30 (1957). However, that statute is not a one-sided command operating only on employees. Section 2, First and Second (45 U.S.C.A. 152, First and Second) makes it a duty of all carriers, as well as employees, "to exert every reasonable effort" to "maintain" agreements and to settle disputes concerning such agreements, if possible, in conference between the parties. Section 2, Sixth of the statute provides for such conferences, while Section 2, Seventh, and Section 6 prohibit carriers from changing rates of pay, rules, or making conditions of their employees embodied in such agreements. The statute is also replete with provisions designed to prevent unilateral action by either carriers or employees until all of the procedures under the Act have been exhausted. The importance of these provisions have been underscored by this Court's holding that such procedures must be exhausted by a carrier as a condition to obtaining injunctive relief. *Brotherhood of Railroad Trainmen* v. *Toledo, Peoria, & Western Railroad,* 321 U.S. 50 (1944). The District Court's jurisdiction to obtain compliance with the statute clearly runs to all of its provisions and is ample authority for the type of condition here imposed on the injunction issued against the employees. If this not be so, then the statute is a straight-jacket for the employees while leaving the carriers free to impose their own views as to the scope of agreements.

In the instant case the respondent railroad put into effect the changes provided by its General Orders Nos. 119 and 120 on a basis of shooting first and asking questions afterwards. The circumstances surrounding this unilateral action of the carrier are set forth in the opinion of the Court of Appeals as follows (R. 370):

> "The strike had been precipitated by General Orders 119 and 120, issued October 2, 1958, by the Railroad Companies, effective at 12:01 A.M. on October 19, 1958. Those orders made certain changes in the intradivisional runs of freight trains and the away-from-home terminals for freight service between Wichita Falls, Texas, and Forgan, Oklahoma, a distance of 302 miles. *Before the orders became effective, the National Mediation Board advised the Railroad Companies that the employees had invoked the services of that Board, but the Railroad Companies nonetheless placed the orders into effect as scheduled.* About a month later, but prior to the hearing of their application for a preliminary injunction, the Railroad Companies undertook to submit the matters in dispute to the National Railroad Adjustment Board, and in part, to the National Mediation Board, and to Committees established by collective bargaining agreements." (Emphasis supplied)

If the *Chicago River* decision requires a District Court to simply enjoin the employees without looking at any of the circumstances involved and molding its decree to fit those circumstances and the purposes of the statute, then the decision becomes a weapon in the hands of carriers to destroy the Railway Labor Act rather than an aid to the accomplishment of the Act's purposes. Carriers can ignore their contractual obligations secure in the knowledge that regardless of the merits of their position they may proceed to

unilaterally enforce their view through years of litigation before the Adjustment Board and in the courts.[2]

In such a situation the ultimate action of the Adjustment Board in many cases can amount only to an academic exercise. When this is combined with the fact that if the employees lose before the Adjustment Board, they have no right of court action, *Union Pacific Railroad Company* v. *Price*, 360 U.S. 601 (1959), Section 3 of the Railway Labor Act becomes compulsory arbitration for the employees, but not for the carriers.

On the other hand, the position of the District Court, which is supported by petitioners, imposes no undue burdens on carriers. It simply means that a District Court can exercise its normal and usual powers of discretion in equity matters to see that justice is done while arbitration resolves the dispute. This is in keeping with the purposes of the Railway Labor Act.

The position of the District Court is also wholly in accord with the conclusions of this Court in *Virginian Railway Company* v. *System Federation No. 40*, 300 U.S. 515 (1937), to the effect that courts of equity have wide latitude and powers in the granting and withholding of relief in cases arising under the Railway Labor Act, which involve not only private interests, but are also of public concern. The Court's findings on this point read as follows (page 552):

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[2] If the decision of the Adjustment Board is against the carrier and involves a monetary award, it is not "final and binding" by the terms of Section 3, First (m) of the Railway Labor Act and requires court action to enforce it. *Brotherhood of Railway & Steamship Clerks, etc.* v. *Atlantic Coast Line Railroad Company*, 253 F. 2d 753 (4th Cir., 1958).

> "The peaceable settlement of labor controversies, especially where they may seriously impair the ability of an interstate rail carrier to perform its service to the public, is a matter of public concern. That is testified to by the history of the legislation now before us, the reports of committees of Congress having the proposed legislation in charge, and by our common knowledge. *Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.*" (Emphasis supplied)

The exercise of discretion by District Courts in situations like the one here involved clearly contributes to orderly resolutions of labor disputes that are subject to Section 3 of the Railway Labor Act.

CONCLUSION

Upon the basis of the foregong points and authorities, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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March, 1960